

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ROBERT W. WILSON and SONIA
SILVA WILSON, husband and wife,

Plaintiffs,

v.

BATTELLE MEMORIAL INSTITUTE,
cba PACIFIC NORTHWEST
NATIONAL LABORATORY,

Defendant.

NO: CV-11-5130-RMP

ORDER DENYING DEFENDANT'S
MOTION TO DISMISS

Before the Court is the Defendant's Motion to Dismiss, ECF No. 5. The Court has reviewed the pleadings and the file and is fully informed.

This case was originally filed in Benton County Superior Court. ECF No. 2 at 4. The Defendant removed the matter to this Court and shortly thereafter filed the instant motion to dismiss. ECF Nos. 1, 5. The Defendant sought to dismiss the complaint because it "contain[ed] merely conclusory statements and allegations that [the Plaintiff] is entitled to relief, which are insufficient to survive a motion to dismiss." ECF No. 6 at 1-2. After the Defendant moved to dismiss, the Plaintiffs

ORDER DENYING DEFENDANT'S MOTION TO DISMISS ~ 1

1 filed their First Amended Complaint, ECF No. 8. The amendment was done as a
2 matter of course because the amendment was filed within twenty-one days after
3 service of the Motion to Dismiss. *See* Fed. R. Civ. P. 15(a)(1)(B). The Defendant
4 has since answered the First Amended Complaint. ECF No. 11.

5 The Plaintiffs' original complaint contained five factual allegations in
6 support of their suit. The Defendant's Motion to Dismiss focuses on the
7 sparseness of those factual allegations. The First Amended Complaint stands in
8 stark contrast. It possesses ten factual allegations that contain much greater factual
9 specificity. In short, the Defendant moved to dismiss the original complaint. That
10 complaint is no longer before the Court. The First Amended Complaint is
11 sufficiently different so as to render the argument in the instant motion irrelevant.
12 Accordingly, the Court finds that the instant motion is moot.

13 In ruling on the Defendant's motion, the Court does not address whether the
14 First Amended Complaint pleads sufficient facts to avoid dismissal under Rule 12.
15 There is no motion before the Court regarding the sufficiency of the First Amended
16 Complaint. The Court's ruling on Defendant's Motion to Dismiss, ECF No. 5, does
17 not deprive the Defendant of an opportunity to file a new motion to dismiss that
18 directly addresses the First Amended Complaint.

19 Accordingly, **IT IS HEREBY ORDERED:**

1 1. The Defendant's Motion to Dismiss, **ECF No. 5**, is **DENIED AS**
2 **MOOT WITH LEAVE TO RENEW.**

3 **IT IS SO ORDERED.**

4 The District Court Executive is hereby directed to enter this Order and to
5 provide copies to counsel.

6 **DATED** this 19th of October, 2011.

7
8 *s/ Rosanna Malouf Peterson*
9 ROSANNA MALOUF PETERSON
Chief United States District Court Judge